

REMARKS

Claims 1-13, 15, and 17-24 are pending in the application. Claims 1-7, 20 and 21 were rejected in the office action dated 2-24-2006 (the "Office Action"). Claims 8-13, 15, and 17-19 were allowed in the Office Action. Claims 22-24 are added as new claims herein.

In the second paragraph of the Office Action, Claims 5-7 were rejected under 35 USC 112, second paragraph indefiniteness. The grounds for the rejection were that claim 5 recited "the device" and the antecedent basis was unclear.

Claim 5 has been amended accordingly to recite "the feeding and picking device" for which antecedent basis was provided in parent claim 1..

In the fourth paragraph of the Office Action, the Examiner rejected claims 1-7, 20 and 21 under 35 USC 103(a) as being unpatentable over Wiegert in view of Thompson and Pottinger. The Applicant respectfully traverses the Examiner's rejection of the claims.

Regarding independent claims 1, 2, and 20, the Wiegert catches 20 identified by the Examiner as the rotating feeding element, do not define a "body with outwardly extending fingers", nor do they "rotate about a vertical axis in a circle". First, each of catches 20 does not constitute a body with outwardly-extending fingers (i.e. plural structures). Second, each of catches 20 does not "rotate about a vertical axis in a circle", but instead follows a complex non-circular path identified by the dot-dash line shown in Wiegert, Figure 4.

Further regarding independent claims 1, 2, and 20, there is no "picking/gathering device" recited in any of claims 1, 2 and 20 as stated by the Examiner. The claims do recite a "picking device", however. We assume the Examiner mistakenly identified the claimed "picking device" as a "picking/gathering device" and address our response to that understanding. First, since there is no vertical axis of circular rotation of the rotary feeding element (see argument above),

there can be no picking device inlet “located in front of” the (non-existent) axis. Second, even if one assumes for the sake of argument that the somewhat circular movement of each catch 20 at the forward end of its travel can be interpreted as defining a vertical axis, the inlet of the stalk rolls 10, 11 is still behind that axis.

This lack of picking inlet/feeding element axis orientation is not cured by the teachings of Thompson and Pottinger. Assuming, for the sake of argument, that Thompson and Pottinger can be combined with Wiegert (a combination which we challenge below) neither Thompson nor Pottinger teach “a rotating feeding element that is rotated in a circle about a vertical axis and comprises a body with outwardly extending fingers” wherein “the [picking device] inlet [is] located in front of the vertical axis of the feeding device” and wherein the picking device “separates useable parts from plant stalks”.

First, the machine of Thompson has no picking device that “separates useable parts from plant stalks”, hence it cannot teach the claimed orientation between a (non-existent) picking device and a feeding element.

The Thompson device is intended to uproot the left-over stalks of cotton plants and scatter them over the ground. In short, Thompson travels through the field **after** a cotton picker has already picked the crop. See, for example, the very first paragraph in the Thompson patent.

Second, the device of Pottinger does not show or describe a picking device that “separates useable part from plant stalks” and thus does not teach the claimed orientation. If anything, the Pottinger reference suggests a maize chopper (and not the claimed “picking device” that “separates useable parts from plant stalks”) that is located well behind the axis of pickup wheels 1,2. See, for example, Pottinger page 4, lines 44-50: wheels 1, 2 are located in front of the “infeed means of a maize chopper”. Also see Pottinger, page 4, lines 91-99: an “infeed means of a maize chopper arranged behind” wheels 1,2.

Thus, none of the references teach the claimed orientation of a feeding element with respect to the picking device.

Further regarding claims 1, 2 and 20, and contrary to the Examiner’s statements on page 4 second paragraph of the Office Action, the feeding element cannot be substituted by any other known devices. The translation states as follows:

A chopping unit can be designed under the picking roller 10, 11 of a picking unit 9. This chopper chops the stalk of the harvest when passing through the picking rollers 10,11. In case of **the chopper** represented in the drawing, it has rotating blades 22 but it **can have any other suitable design** as well. [emphasis added]

The corresponding text of the US equivalent patent (6412259) states as follows:

Below the gathering rollers 10, 11 of a gathering unit 9, a chopper may be provided, which chops the stalks of the harvested goods as the latter pass through the gathering rollers 10, 11. **The chopper** shown has rotating blades 22, however, it **may also have any different construction.** [emphasis added]

Neither the Wiegert translation nor the Wiegert English language patent say anything about equivalents to catches 20. Neither one therefore teaches the combination of Thompson or Pottinger with Wiegert.

Further, regarding claims 1, 2, and 20, the two translations speak about equivalents to a chopper, and a chopper is not the feeding element claimed herein as decided by the Board of Patent Appeals determined in the last appeal. Hence, whether Thompson or Pottinger have equivalents to a chopper or not is immaterial regarding equivalents to a feeding element.

Even further regarding claims 1, 2, and 20, Wiegert makes no statements of devices equivalent to catches 20. Where there are equivalent devices, such as the equivalents to the Wiegert chopper, Wiegert recites them. In view of Wiegert's willingness to recite equivalents where they exist, Wiegert's silence regarding equivalents to the catches 20 suggests that Wiegert knew of none.

Even further regarding claims 1, 2, and 20, and contrary to the Examiner' s statements on page 4, second paragraph of the Office Action, the Wiegert US equivalent, USPN 6412259, does not teach any equivalents to catches 20 at column 2, lines 32-33. The text cited by the Examiner says "drawing in chains 18, 19 rotate

in opposite directions driven inwards, which are studded with catches 20. Below the gathering rollers 10, 11 of a gathering unit 9, ..." This language is silent regarding any equivalents to catches 20 and thus Wiegert does not teach any replacement of Wiegert catches 20 with either Thompson or Pottinger.

### ***New Claims***

New claims 22, 23 and 24 are added by this Amendment that depend directly from claims 1, 2, and 20, respectively.

The new claims recite "the picking device comprises two stalk rolls having forward ends, and further wherein the axis is located behind and to the side of the two stalk roll ends".

Support for these claims can be found at least in Figure 1, which shows the two rolls that engage the stalks of the crop plant and draw it downward, the two forward ends of those rolls, and the location of the axis of rotation of the upper and lower feeding elements 14,16 and their respective fingers 44,46 behind and to the side of those ends in plan view.

### ***Claim Amendments***

The claims amended herein are not amended to distinguish the claims over the prior art, but to place them in better condition for appeal and to reduce any ambiguity by making it clear that the claimed picking and feeding device comprises a picking device and a feeding element (illustrated as 14 **or** 16), and (as some claims recite) that the feeding element may optionally include both upper and lower feeding elements (e.g. 14 **and** 16). The Examiner's recent rejection of claim 5 suggested that revisions of the other claims might be helpful.

The claims were amended to recite a "feeding element" in place of the alternate term "feeding device" and also to amend the term "the device" to recite "feeding and picking device".

The claims defined the "snapping channel" as related to the "picking device", yet elsewhere in the claims the "snapping channel" was related to the "feeding element". This has been corrected everywhere in the claims.

***Amendments to the Specification***

The specification has been amended to recite "Row-Insensitive Feeding and Picking Device for An Agricultural Header" instead of "Row-Insensitive Gathering Device for An Agricultural Header".

This more accurately reflects the language of the claims.

All the claims are now believed to be in condition for allowance, early notification of which is respectfully requested.

No fees are believed to be due for this amendment

Any fees or charges due as a result of filing of the present communication may be charged against Deposit Account 04-0525.

Respectfully



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